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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,024	10/20/2003	David J. MacDonald	DM-3	4005

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EXAMINER

GILBERT, WILLIAM V

ART UNIT PAPER NUMBER

3635

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/690,024	MACDONALD, DAVID J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William V. Gilbert	3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

Art Unit: 3635

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 2, 3, 4 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Rovtar (U.S. Patent No. 6,826,878 B1).

2. Regarding Claim 1, Rovtar discloses in Figure 2 an adjustment apparatus (Figure 2, generally) having an adjustment tube (110) having a threaded radial surface terminating in a bearing surface (114), a support member (82) having a threaded aperture receiving the threaded radial surface of the adjustment tube (80), and a tool having an elongated portion and engaging said adjustment tube (Column 5, lines 14-16).

3. Regarding Claim 2, Rovtar discloses in Figure 2 where the bearing surface comprises a flat washer (126).

Art Unit: 3635

4. Regarding Claim 3, Rovtar discloses in Figure 2 a second tube concentrically located outside said adjustment tube and affixed to said support member (82).

5. Regarding Claim 4, Rovtar discloses in Figure 2 an adjustment tube comprising at least one slot for receiving said tool (122) and the tool having at least one tip for insertion into said slot (Column 5, lines 14-16).

6. Regarding Claim 5, only the apparatus is claimed. The method of attaching it to the frame is given no patentable weight.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3635

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 6, 7, 8, 9 and 10 are rejected under 35 U.S.C.

103(a) as being unpatentable over Chenoweth (U.S. Patent No. 5,477,644) in view of Rovtar.

10. Regarding Claims 6, 7, 8, 9 and 10, Chenoweth discloses in Figure 7 an adjustable metal frame (Column 2, lines 62-65), and an adjustment apparatus (6) in alignment with a bolt hole (7), but does not disclose a spacer device having a bearing surface extending from a threaded tube as provided in Rovtar (See Rovtar Figure 2, elements 110, 114 and 126). Further Rovtar discloses a tool configured for engaging the threaded tube (Column 5, lines 14-16) with a support member affixed to the frame member having a threaded aperture receiving said threaded tube (Rovtar 80, 82), a bearing surface comprising a flat washer (Rovtar 126), a second tube concentrically located outside said threaded tube and affixed to said support member (Rovtar 82), at least one slot (Rovtar 122), and a tool with at least one tip for insertion into said slot (Rovtar, column 5, lines 14-16). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the metal

Art Unit: 3635

frame of Chenoweth to use the adjustment apparatus of Rovtar. One would have been motivated to make such a modification because Rovtar's adjustment mechanism is functionally equivalent to Chenoweth's and would perform equally as well.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Kennedy et al. (U.S. Patent No. 5, 240,349) and Richter (U.S. Patent No. 3, 685, 226).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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03/17/06



Carl D. Friedman  
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Group 3600